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February 7, 2005

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FEB - 7 2005

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

Re: Emergency Motion for Removal of Bearingpoint, Inc. from Transition
Administrator Team and Cessation of Transition Process Pending Announcement
of a Replacement Administrator; WT Docket No. 02-55

Dear Ms. Dortch:

Enclosed is an Emergency Motion for Removal of Bearingpoint, Inc. from Transition Administrator Team and Cessation of Transition Process Pending Announcement of a Replacement Administrator, being filed by Mobile Relay Associates and Skitronics, LLC, as well as four copies.

Out of an abundance of caution, Mobile Relay and Skitronics are filing this motion both manually and electronically on the ECFS filing system. Although being filed in two ways, they are one and the same document.

Sincerely,



David J. Kaufman

Enclosures

cc: Service List
Michael Wilhelm, Chief, PS&CID
Mobile Relay Associates
Skitronics, LLC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEB - 7 2005

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Improving Public Safety Communications)
in the 800 MHz Band)
)
Consolidating the 800 and 900 MHz Industrial/)
Land Transportation and Business Pool Channels)
)
Amendment of Part 2 of the Commission's Rules)
to Allocate Spectrum below 3 GHz for Mobile)
and Fixed Services to Support the Introduction of)
New Advanced Wireless Services, including)
Third Generation Wireless Systems)
)
Petition for Rule Making of the Wireless)
Information Networks Forum Concerning the)
Unlicensed Personal Communications Service)
)
Petition for Rule Making of UT Starcom, Inc.,)
Concerning the Unlicensed Personal)
Communications Service)
)
Amendment of Section 2.106 of the Commission's)
Rules to Allocate Spectrum at 2 GHz for Use by)
the Mobile Satellite Service)

WT Docket No. 02-55

ET Docket No. 00-258

**EMERGENCY FILING!
EXPEDITED HANDLING
REQUESTED**

RM-9498

RM-10024

ET Docket No. 95-18

To: Chief, Public Safety & Critical Infrastructure Division

**EMERGENCY MOTION FOR REMOVAL OF BEARINGPOINT, INC., FROM
TRANSITION ADMINISTRATOR TEAM AND CESSATION OF TRANSITION
PROCESS PENDING ANNOUNCEMENT
OF A REPLACEMENT ADMINISTRATOR**

**MOBILE RELAY ASSOCIATES
SKITRONICS, LLC**
David J. Kaufman
Brown Nietert & Kaufman, Chartered
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(202)-887-0600

SUMMARY

The standard for removing a biased, partial person from the Transition Administrator team should be no different than the standard for appointing a person in the first place – if the person fails to meet the necessary standard for independence and impartiality, the person must be removed. Otherwise, the Commission would be rewarding a person for having misrepresented or lacked candor to receive the appointment.

The issue of whether Bearingpoint is qualified to serve as Transition Administrator is timely, since until January 28, 2005, Bearingpoint, almost certainly in consultation with Nextel, had concealed the existence of material information demonstrating it to be unqualified. With Bearingpoint receiving almost \$32 million each year in consulting payments from Nextel, a fact that was hidden until January 28, 2005, Bearingpoint is not independent or impartial. Movants have a strong interest in ensuring that the Transition Administrator is fair and impartial, and independent of Nextel, and will be materially harmed if Bearingpoint, a manifestly unqualified entity, is allowed to remain Transition Administrator.

Bearingpoint and Nextel purposely chose to withhold from the Commission and the public the fact that Nextel pays Bearingpoint almost \$32 million per year when the TASC Report was filed. Such a fact is extremely material, and should have been disclosed at the time. Bearingpoint's status as a major vendor of services to Nextel violates Canons 4A and 4D of the ABA's Model Code of Judicial Conduct, and renders Bearingpoint unfit to serve as the equivalent of a "special master" to resolve disputes between Nextel and other licensees.

This situation is far too serious for the Commission to try to sweep under the rug, notwithstanding that some delay could result from the need to find and retain a replacement Transition

Administrator. At some point, and that point has now been reached, the integrity of the Commission's processes and the rights of innocent parties such as Movants have to trump the supposedly all-consuming need for "expedition" of the rebanding of 800 MHz. Accordingly, Movants request that the Commission immediately remove Bearingpoint as Transition Administrator, and promptly begin the search for a fair and impartial replacement.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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To: Chief, Public Safety & Critical Infrastructure Division

**EMERGENCY MOTION FOR REMOVAL OF BEARINGPOINT, INC., FROM
TRANSITION ADMINISTRATOR TEAM AND CESSATION OF TRANSITION
PROCESS PENDING ANNOUNCEMENT
OF A REPLACEMENT ADMINISTRATOR**

Mobile Relay Associates ("MRA") and Skitronics, LLC ("Skitronics") (collectively, "Movants"),
by their attorney, hereby submit this Emergency Motion for Removal of Bearingpoint, Inc. from Transition
Administrator Team and Cessation of Transition Process Pending Announcement of a Replacement

Administrator (“Emergency Motion”). Movants have just been apprised of previously unavailable material information concerning Bearingpoint, Inc. (“Bearingpoint”), the lead member of the tripartite Transition Administrator team, which information demonstrates that Bearingpoint is not qualified to carry out the functions of the Transition Administrator in an impartial and unbiased manner.

Movants have learned that Nextel Communications, Inc. (“Nextel”) is a very major customer of Bearingpoint, having paid Bearingpoint over \$31.7 million in fees just during calendar year 2004, with even more likely to be paid annually during years 2005 and beyond. This material information was not previously available to Movants and could not have been discovered earlier by Movants through the exercise of reasonable diligence.¹ Thus, it is timely for Movants to raise the issue at this stage. Although removing Bearingpoint at this time might cause some disruption to the transition process, which would have to be suspended pending the choosing of an impartial replacement for Bearingpoint, the fault is Bearingpoint’s, and possibly the Transition Administrator Search Committee (“TSAC”). As it is manifestly not Movants’ fault, equity requires that Movants be placed in the situation where they would have been had this information not been wrongly withheld from the public during the original selection process.²

¹By Public Notice, *Ex Parte Presentations and Post-Reply comment Period Filing in Permit-but-Disclose Proceedings*, released January 28, 2005 (“*Ex Parte Filing Notice*”), the Commission announced that on January 24, 2005, the Transition Administrator had filed a new written *ex parte* submission (“Bearingpoint Belated Disclosure”) in this proceeding. Following review of the *Ex Parte Filing Notice*, Petitioners retrieved a copy of the Bearingpoint Belated Disclosure. This Emergency Motion is timely filed within six business days of the release of the *Ex Parte Filing Notice*.

²This information is also highly relevant to Movants’ earlier Motion for Partial Stay of Decision Pending Appellate Review filed in this case on November 19, 2004 (“*Motion for Partial Stay*”) which was denied by the Division, *Order*, DA 05-82, released January 14, 2005. The information regarding Bearingpoint’s serious conflict of interest increases the irreparable harm that will be suffered by Movants absent a partial stay of Commission’s decision, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order* (WT Docket 02-55), 19 FCC Rcd 14969

I. Movants' Interest in a Fair Transition Process

MRA is the holder of a large amount of site-based 800 MHz SMR spectrum (39 channels) in the Denver, Colorado EA, of which 19 channels are in the former 1-120 band (851-54 MHz) which is slated for relocation. All of MRA's customer units are programmed to operate across all 39 channels, such that each and every customer unit will have to be retuned or replaced when MRA is relocated off its current spectrum.³ Nextel already has contested MRA's right to compensation for most of its losses and expenses in connection with the rebanding process, in its filings in opposition to Movants' requests for stay pending appeal before this Commission and before the US Court of Appeals in Case No. 04-1413, now pending. Thus, it is critical to MRA that the Transition Administrator be absolutely impartial, and not beholden to or subject to influence by Nextel.

Skitronics holds a large amount of both site-based and EA 800 MHz SMR spectrum, and is currently seeking appellate review of the *Report and Order* herein. Although Skitronics is not currently slated to be relocated, it is slated to have its range of permissible uses of its licensed spectrum (and therefore the value of that spectrum) slashed, and there is a significant probability that the new rebanding regime will be modified such that Skitronics will be relocated to other spectrum where its range of permissible uses will remain as it was prior to the issuance of the *Report and Order*. Under such

(2004); summary published in the Federal Register November 22, 2004, *see* 69 Fed Reg 67823 (2004) ("*Report and Order*"). Consequently, Movants are simultaneously filing a petition for partial reconsideration of the Division's earlier denial of their *Motion for Partial Stay*.

³All facts set forth herein and not susceptible to official notice are supported by the declarations of Mark J. Abrams and John Komorowski previously submitted in this docket, in particular those submitted as attachments to Movants' jointly-filed Motion for Partial Stay Pending Appellate Review filed November 19, 2004, and their Reply to Oppositions to Motion for Partial Stay Pending Appellate Review filed December 7, 2004.

circumstances, Skitronics also will have to have the services of the Transition Administrator to resolve any compensation disputes that arise between it and Nextel, and Nextel's filings against Movants already have signaled that Nextel intends to protest any claim from Skitronics. Thus, Skitronics, like MRA, requires that the Transition Administrator be absolutely impartial, and not beholden to or under the influence of Nextel.

Indeed, Skitronics currently has pending before the Transition Administrator a request that in any forthcoming report or plan regarding rebanding, that such plan accommodate the relocation of all of the company's 800 MHz spectrum into either the new ESMR band or the band immediately adjacent to the new ESMR band.⁴ Skitronics is vitally interested in having an impartial Transition Administrator rule on that pending request. An adverse decision by a biased Transition Administrator could cause irreparable harm to Skitronics.

II. The Commission Has Ruled That the Transition Administrator Must Be Impartial

In the *Report and Order*, *supra*, the Commission devoted a lengthy discussion to the selection and duties of the office of Transition Administrator (¶¶ 190-200, 19 FCC Rcd. at 15070-75). It justified creating the concept of the Transition Administrator as opposed to the Nextel-proposed "Relocation Coordination Committee" ("RCC") largely because "we are sensitive to the comments of those parties who expressed concern about the potential conflict of interest inherent in the proposed RCC . . ." *Id.*, at 15070. The Commission required that the Transition Administrator be "an independent party". *Id.* It further required that when the Commission-appointed search committee selected a Transition Administrator, the search committee deliver a notice to the Commission that "shall: (a) *fully disclose any perceived*

⁴See, Letter from David J. Kaufman to Robert B. Kelly, January 20, 2005.

*potential conflicts of interest or appearance of conflicts of interests of the Transition Administrator . . .” Id., at 15071 (emphasis added).*⁵

III. Bearingpoint’s Original Disclosure Was Deceptive in the Extreme

The TASC filed its report recommending the appointment of the “Bearingpoint Team” with the Commission on October 12, 2004 (“TASC Report”).⁶ In that report, at p. 6, the TASC stated:

Each firm within the Bearingpoint Team has submitted a Certification of Independence and No Financial Interest pursuant to paragraph 191 of [the *Report and Order*]. [Footnote omitted.] Upon review of these disclosures and after additional discussions with Team representatives, the TASC has not discovered any area of concern relating to the independence or the financial interests of the firms that make up the Team. The TASC believes the Team can serve as an independent Transition Administrator based on the disclosures provided by Bearingpoint, Squires-Sanders-Dempsey LLP, and Baseline Technologies, respectively.

Such sweeping statements concerning satisfaction with the independence of the proposed “Team” would ordinarily be enough to lull members of the public into believing that they could trust the Transition Administrator to be impartial, but just to make certain that all qualms were put to rest, the TASC separately stated, as the very last sentence of its report:

Furthermore, the TASC believes that *the Bearingpoint Team will be independent, impartial and will remain free of any potential conflict with regard to this undertaking.*

⁵The Commission explained that the Transition Administrator will function as does “a special master in a judicial proceeding” including, among other things, the issuance of a recommended decision in cases of disputes between Nextel and other licensees, for delivery to the Commission (which acts as the judge to the Transition Administrator’s special master). *Id.*

⁶For convenience, a copy of the TASC Report is attached hereto as Exhibit A, and a copy of the Bearingpoint Belated Disclosure is attached hereto as Exhibit B.

The other two entities in the Bearingpoint Team are the law firm of Squires Sanders & Dempsey, LLP, and Baseline Telecom, Inc. Based upon the currently available disclosures, Movants have no quarrel with the continued participation of those firms in the office of Transition Administrator.

(Emphasis added.) *Id.*

Attached to the TASC Report was a single, half-page disclosure by Bearingpoint, in which Bearingpoint first assured the TASC, the Commission and the public as follows:

Bearingpoint, Inc. does not believe that any of its past or present activities gives rise to a valid potential conflict of interest or appearance of conflict of interest.

Bearingpoint then added the following statement:

Bearingpoint has current commercial contracts with Nextel Communications, Inc. including subsidiaries and affiliates. Bearingpoint is one of several vendors providing support for Nextel's ongoing enterprise projects. These services predominantly relate to back-office systems testing and support. As part of this relationship, Bearingpoint recently submitted a proposal to be considered a Nextel prime vendor to provide similar testing-related services over a period of years. Bearingpoint is under a confidentiality obligation with respect to the details of its Nextel work, however, Bearingpoint can state the the contracts do not involve any work with respect to 800 MHz networks and that Bearingpoint has not had any interaction with Nextel's TASC representative for any of these contracts.

Given that Bearingpoint was certifying that not only the complete absence of actual conflicts, but not even any "appearance of conflict of interest", and given that the TASC members had not merely read this disclosure prior to recommending Bearingpoint but had also had "additional discussions with Team representatives" before assuring the Commission and the public that "the Bearingpoint Team will be independent, impartial and will remain free of any potential conflict", the opaque statement by Bearingpoint, unaccompanied by any dollar amounts, was insufficient to alert the public that the involved Nextel contracts were material from a financial standpoint.

Nor can it plausibly be argued that \$31.7 million every year is "*de minimus*" to a company such as Bearingpoint. That amount corresponds to one percent of its gross revenues, according to Bearingpoint's latest available annual report to shareholders (2003). Given the nature of the relationship

of fixed costs to variable costs, and the incremental nature of this revenue, the Nextel customer relationship could easily account for a much larger percentage of Bearingpoint's profits.

But more importantly, Bearingpoint itself knew full well that \$31.7 million every year is not *de minimus*, because Bearingpoint purposely chose not to reveal this figure in its October 12, 2004 so-called "disclosure." Rather, Bearingpoint decided to gamble that once the Commission appointed it as Transition Administrator, it would not have the intestinal fortitude to disqualify Bearingpoint after the fact, even though pre-appointment disclosure would have precluded Bearingpoint's appointment in the first place. Such a strategy was deceptive in the extreme.

IV. The Conflict Is Actual, Not Potential, and Is Huge

A. The Amount Is Far Too Large for the Commission to Ignore

Stated otherwise, there was no inkling from the October 12, 2004 TASC Report that Bearingpoint receives over \$30 million in customer business from Nextel each year. At \$31.7 million each year, Bearingpoint would be paid over \$95 million by Nextel over the course of the three-year rebanding process. And even that estimate is almost certainly very low, because that \$31.7 million was all derived from "current commercial contracts" that "predominately relate to back-office systems testing and support." That \$31.7 million would not include any revenues from being upgraded to a "prime vendor". "Prime vendor" now takes on much more significance than it had when it was tempered with the assurances of the TASC that it had discussed with Bearingpoint the matters that had been generally referenced in Bearingpoint's "disclosures". Without doubt, Nextel is a larger customer of Bearingpoint now than it was before the Transition Administrator selection process was completed.

Bearingpoint knew that it had a very real conflict. As noted, it purposely chose not to reveal the size of its pre-existing consulting contracts with Nextel in the October 12, 2004 filing.⁷ Bearingpoint, rather, went to great pains to hide the true nature of its relationship with Nextel, stating that it was prohibited by a confidentiality agreement with Nextel from disclosing any details of its work for Nextel.

It is highly unlikely that any contract between Nextel and Bearingpoint would have prohibited disclosure of the dollars involved prior to Bearingpoint's appointment as Transition Administrator, and impossible that any such contractual clause would have been enforceable in equity.⁸ Patently, Bearingpoint inserted the confidentiality reference to give the false impression that any confidential but relevant facts had been disclosed in confidence to the TASC during the "additional discussions with Team Representatives".

B. Bearingpoint's Appointment Violates Applicable Ethical Canons

Imagine a special master, being asked to make a recommended decision in a complicated telecom case to a federal judge, where one of the litigants happens to pay the master almost one hundred million dollars for "unrelated" consulting work. Is there any chance the other litigant would receive a fair shake? Is there any possibility that the special master could seriously contend that the "unrelated" payments did not even raise the "appearance" of a conflict? The answer to both questions is a resounding "no!"

⁷It is unclear whether Bearingpoint disclosed this information to the TASC or not. Obviously, Nextel, a member of the TASC, had access to the information.

⁸Indeed, once several months had passed and the Transition Plan was ready for delivery to the Commission (*i.e.*, once Bearingpoint and Nextel were satisfied that Bearingpoint had been in office long enough to discourage the Commission from trying to unwind the improper appointment of Bearingpoint), the dollars were revealed. This proves there never was any prohibition upon their release, raises the prospect that Bearingpoint and Nextel colluded on the appropriate strategy for having Bearingpoint named as Transition Administrator despite being a major Nextel vendor, and irretrievably taints Bearingpoint as biased in favor of Nextel.

As the Commission noted, the Transition Administrator serves in a quasi-judicial role as equivalent to a special master in a judicial proceeding.⁹ As such, the rules of judicial conduct related to conflicts of interest are applicable in considering whether Bearingpoint has met the Commission's requirement of independence. Canon 4 of the American Bar Association's Model Code of Judicial Conduct ("*Model Code*") states: "A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations." At least two of the specific provisions of Canon 4 (Canons 4A and 4D) are applicable to this case.

Canon 4D, "Financial Activities," provides in subsection (1):

A judge shall not engage in financial and business dealings that: (a) may reasonably be perceived to exploit the judge's judicial position, or (b) involve the judge in frequent or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

In this case, Bearingpoint has tardily disclosed that not only is it regularly involved in a close business relationship with a party to this proceeding, it is also in negotiations to increase that business relationship during the course of the time in which it will serve as Transition Administrator. The nature of the business is very financially significant. The party with whom Bearingpoint is involved is not a peripheral party that may only occasionally have a matter pending in front of the Transition Administrator. The party with whom Bearingpoint is involved, Nextel, will be a necessary party in *each and every* case coming before the Transition Administrator.

The Bearingpoint Belated Disclosure attempts to address this disqualifying conflict of interest by proposing an internal "firewall" within the company. *But this is futile and beside the point. The*

⁹*See, note 5, supra.*

Commentary to Canon 4D(1) explains the reason for the rule:

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court.... *This rule is necessary to avoid creating an appearance of exploitation of office or favoritism* and to minimize the potential for disqualification.

(Emphasis added.) A “firewall” does not address the problem of a judge exploiting his office, by the prospect of favorable decisions in contested cases, to obtain valuable side consulting agreements with one of the litigants.¹⁰ If Bearingpoint sought appointment as a special master in a judicial proceeding where Nextel were one of the litigants, Bearingpoint would be disqualified. The same result is demanded here.

Bearingpoint's appointment as Transition Administrator also violates Canon 4A of the *Model Code*, which provides, in pertinent part, that: “A judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cast reasonable doubt on the judge's capacity to act impartially as a judge....” If reasonable doubt about a special master's impartiality is not created by the special master's doing tens of million dollars worth of business annually with the main litigant, then there is no situation where reasonable doubt could ever exist.

CONCLUSION

The standard for removing a biased, partial person from the Transition Administrator team should

¹⁰A “firewall” is a permissible method of resolving potential conflicts of interest within a law firm, not a judicial body, under the canons of ethics. When applied in the context of a law firm, it is used to safeguard the confidentiality of information that two clients with opposing interests do not want disclosed to each other. Even a firewall is permissible only where each and every involved client unanimously agrees to the procedure.

Where, as here, the perceived abuse is not the potential disclosure of confidential information, but favoritism toward the litigant that is already a very major customer of the judge, a firewall does nothing to ameliorate the problem.

be no different than the standard for appointing a person in the first place – if the person fails to meet the necessary standard for independence and impartiality, the person must be removed. Otherwise, the Commission would be rewarding a person for having misrepresented or lacked candor to receive the appointment.

The issue of whether Bearingpoint is qualified to serve as Transition Administrator is timely, since until January 28, 2005, Bearingpoint, almost certainly in consultation with Nextel, had concealed the existence of material information demonstrating it to be unqualified. With Bearingpoint receiving almost \$32 million each year in consulting payments from Nextel, a fact that was hidden until January 28, 2005, Bearingpoint is not independent or impartial. Movants have a strong interest in ensuring that the Transition Administrator is fair and impartial, and independent of Nextel, and will be materially harmed if Bearingpoint, a manifestly unqualified entity, is allowed to remain Transition Administrator.

Bearingpoint and Nextel purposely chose to withhold from the Commission and the public the fact that Nextel pays Bearingpoint almost \$32 million per year when the TASC Report was filed. Such a fact is extremely material, and should have been disclosed at the time. Bearingpoint's status as a major vendor of services to Nextel violates Canons 4A and 4D of the ABA's Model Code of Judicial Conduct, and renders Bearingpoint unfit to serve as the equivalent of a "special master" to resolve disputes between Nextel and other licensees.

This situation is far too serious for the Commission to try to sweep under the rug, notwithstanding that some delay could result from the need to find and retain a replacement Transition Administrator. At some point, and that point has now been reached, the integrity of the Commission's processes and the rights of innocent parties such as Movants have to trump the supposedly all-consuming need for

“expedition” of the rebanding of 800 MHz. Accordingly, Movants request that the Commission immediately remove Bearingpoint as Transition Administrator, and promptly begin the search for a fair and impartial replacement.

Respectfully submitted,
MOBILE RELAY ASSOCIATES
SKITRONICS, LLC

February 7, 2005

By: _____

David J. Kaufman
Their Attorney
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**EMERGENCY MOTION FOR REMOVAL
OF BEARINGPOINT, INC., FROM
TRANSITION ADMINISTRATOR TEAM
AND CESSATION OF TRANSITION PROCESS
PENDING ANNOUNCEMENT OF
A REPLACEMENT ADMINISTRATOR**

EXHIBIT A

(Corrected copy)

TRANSITION ADMINISTRATOR SEARCH COMMITTEE

October 12, 2004

Michael Wilhelm, Chief
Public Safety & Critical Infrastructure Industry Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WT Docket 02-55

Dear Mr. Wilhelm:

Pursuant to the Commission's *Report and Order* in the above-referenced proceeding, the Transition Administrator Search Committee (TASC) is pleased to provide the Commission with its selection of BearingPoint, Squire-Sanders-Dempsey LLP, and Baseline Telecom, Inc. ("BearingPoint team") to be appointed as the Transition Administrator, subject to Commission approval of a contract to be negotiated between Nextel and the BearingPoint team regarding hourly rates and other necessary terms and conditions.

We appreciate the opportunity to be of assistance to the Commission in this important matter. This letter and the attachment will be filed with the Secretary.

Respectfully submitted,

Robert Gurss
Director, Legal & Government Affairs
Association of Public-Safety Communications Officials-International, Inc.

Jill Lyon
Vice President and General Counsel
United Telecom Council

Mark Crosby
President/CEO
Industrial Telecommunications Association

Geoffrey Stearn
Vice President, Spectrum Resources
Nextel Communications, Inc.

Christine Gill
McDermott, Will & Emery, LLP
Counsel for Southern LINC

Transition Administrator Search Committee
Re: Reconfiguration of 800 MHz Band

On September 10, 2004, the Transition Administrator Search Committee (the "TASC") issued a request for Statements of Interest ("SOI") to solicit parties to serve as an independent Transition Administrator ("TA") to facilitate the reconfiguration of the 800 MHz Band. The TASC received twelve SOIs by the September 24, 2004, deadline. After review of the responses, the TASC met with several interested groups on October 4, 2004.

For reasons outlined below, the TASC has determined that the team of BearingPoint, Squire-Sanders-Dempsey LLP, and Baseline Telecom, Inc. (the "BearingPoint Team") is best qualified to serve as the Transition Administrator as outlined in the Federal Communications Commission's Report and Order in the matter of Improving Public Safety Communications in the 800 MHz Band.

Listed below is information regarding the key leaders of the BearingPoint Team:

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Baseline Telecom, Inc.
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Lafayette, CO 80026
JBoyer@BaselineTelecom.Com

Skills and Experience

The following is a brief summary of the relevant skills and experience presented by the members of the BearingPoint Team that are specifically relevant to its selection:

BearingPoint

- Expertise in managing small to large-scale, multi-faceted initiatives for government agencies and commercial entities,
- Served as an independent body in similar regulatory proceedings, such as Section 271 Compliance by Local Exchange Carriers,
- Experience assisting public authorities with financial management/accounting and auditing requirements,
- Experience working with FCC and various State Public Utility Commissions,
- Capability to provide professional staff and financial resources on an as- needed basis for multi-year reconfiguration,
- Knowledge of wireless systems and carrier operations, and
- Experience with first responder networks.

Squire-Sanders & Dempsey LLP

- Mediation skills specific to the telecommunications industry,
- Understanding of appropriate FCC's rules, policies and frequency assignment procedures, and
- Experience working with the FCC and relevant 800 MHz certified frequency advisory committees and industry associations.

Baseline Telecom

- Requisite technical expertise in 800 MHz spectrum analysis, frequency allocation and radio systems,
- Capability to develop necessary tools to gather information to define costs for complex telecommunications systems,
- Experience in complex 800 MHz regions (e.g., San Diego), and
- Knowledge of the history, development and regulatory structure of the 800 MHz band.

Qualification Criteria

As part of the Request for Statements of Interest, the TASC identified the following minimum qualifications, based upon its interpretation of the Report and Order, which the Transition Administrator must possess in order to perform in an effective manner:

- Accounting and auditing capabilities,
- Mediation skills and experience,
- Technical expertise with 800 MHz (806-824/851-869 MHz) communications systems, including specifically system architectures, the retuning process and associated costs,
- Understanding of regulations specific to the 800 MHz band,
- Understanding of radio frequency assignment procedures and methodology used in the 800 MHz band,
- Human and financial resources necessary to provide the scope and depth of services specified in the Report and Order throughout the multi-year reconfiguration process,
- Ability to work cooperatively and impartially with all relevant parties, including 800 MHz band licensees, FCC-certified frequency advisory committees, and the FCC, and
- Expertise in managing a large-scale, multi-faceted initiative.

The TASC's assessment of the BearingPoint Team's capabilities in these areas are as follows.

Accounting and auditing capabilities

The BearingPoint Team maintains sufficient in-house accounting and auditing personnel to comply with requirements of the Report and Order, as well as to provide all necessary quarterly and other periodic reports to the FCC and the parties involved in the reconfiguration process. For the annual audit requirements of the Transition Administrator, the BearingPoint Team committed to identify and work collaboratively with an independent, outside accounting firm that is acceptable to the Commission.

Mediation Skills and Expertise

Squire Sanders provided more than adequate evidence that it retains significant expertise related to alternative dispute resolution ("ADR") techniques to resolve disputes. Squire Sanders indicated that it has extensive experience in conducting neutral evaluations/expert determinations and binding and nonbinding arbitration, as well as mediations conducted both on an *ad hoc* basis and under many different institutional rules. It was noted that Squire Sanders is a charter member of the CPR Institute for Dispute Resolution and is a signatory to the Law Firm Pledge to consider and utilize ADR where appropriate.

Technical Expertise With 800 MHz Communications Systems

Baseline Telecom has managed personally the design, construction and phased introduction of commercial and public 800 MHz networks including voice, data and fixed wireless systems. Sample technical activities for which Baseline Telecom has been responsible have included the following projects.

- Design and implementation (spectrum aspects as well as network hardware) of a multi-site network in the San Diego market.
- Planning, design, implementation and management (technical and fiscal) of public-safety communications system for a large suburb in a major metropolitan area which required a complete transition into a new frequency plan while maintaining full operational capability.
- Technical and fiscal oversight of a nationwide SMR consolidator's systems that included all major trunked formats used in the commercial trunked environment. Market responsibilities included San Diego and Seattle (border regions) and major urban centers (Boston and Dallas). During spectrum acquisition periods, the networks in these areas were expanded, re-configured, and upgraded while the systems were in full operation serving thousands of mobile and portable units.
- Analyzed, recommended and negotiated the successful reconfiguration of a public safety system in a major metropolitan market in the Canadian border region.
- Designed (including circuit boards) and implemented regional and statewide SCADA networks using 800 MHz and other land mobile bands.

Understanding of Regulations Specific to the 800 MHz Band

Members of the BearingPoint Team have been involved in the 800 MHz band from virtually its inception and have been involved in all major proceedings affecting this band. In addition to participating in numerous regulatory proceedings before the FCC, members of the BearingPoint Team have been active on behalf of a wide variety of licensees in the practical implementation of the 800 MHz band regulations, including the following:

- The filing of license applications, requests for rule waivers and special temporary authorizations,
- Frequency coordination and related requirements,
- Short-spacing analytical activities,
- Border area issues,
- RF interference prediction and resolution,
- Construction certification efforts,
- Finder's preference proceedings,
- Management agreements,
- Equipment certification processes,
- Tower siting matters, and
- System reprogramming and retuning activities.

Understanding of Radio Frequency Assignment Procedures and Methodology

Members of the BearingPoint Team have had full responsibility for, and direct control over, spectrum licensing and management aspects of large 800 MHz networks, as well as managing spectrum-related activities for other parties. They have filed through frequency coordination processes applications for new system licenses, relocations, changes and swaps in frequencies, assignments of authorization, transfers of control, and for Special Temporary Authorizations. The BearingPoint Team provides a substantive understanding of the licensing issues and history of the 800 MHz band.

Necessary Human and Financial Resources for the Multi-year Reconfiguration Process

BearingPoint has substantial employee resources at their disposal, which provides the BearingPoint Team the ability to enhance or decrease the level of dedicated personnel expeditiously depending on the needs of each phase of the 800 MHz reconfiguration. Squire Sanders is able to access the legal, mediation and regulatory experience of the firm's 750 attorneys. Baseline Telecom adds relevant technical skills to the team and can secure additional support from a network of experienced colleagues and associates in the telecommunications community. In order to further supplement these resources, the BearingPoint Team has proposed the establishment of an Industry Advisory Board to provide additional expertise and guidance to the TA.

The ability to commit to an appropriate level of experienced staff and management support, coupled with mediation and technical capabilities, provided the TASC with sufficient confidence that the BearingPoint Team is well suited to accomplish the TA assignments.

The Ability to Work Cooperatively and Impartially With all Relevant Parties

The BearingPoint Team provided evidence that it has and will continue to work cooperatively with many of the entities involved in 800 MHz realignment.

The BearingPoint Team has committed to establishing open and transparent policies and processes governing the TA's operations, thereby enhancing its ability to satisfy the goals of fairness and impartiality.

Expertise in Managing a Large-scale, Multi-faceted Initiative

The BearingPoint Team possesses methodologies and capabilities that will provide the framework required to manage multiple, concurrent projects that require a high level of coordination across various teams and impacted parties. The team members have worked on numerous large-scale projects similar in scope and duration to the planned 800 MHz reconfiguration process.

From 1998 to 2003 BearingPoint served as the neutral firm for the majority of the Section 271 Regional Bell Operating Company ("RBOC") certifications conducted on a state-by-state basis. BearingPoint's role in the process was to act as the independent organization that evaluated compliance with Section 271 guidelines for state regulators. BearingPoint also facilitated the Transportation Security Administration's ("TSA") Strategic Airport Security Rollout. After the attacks of September 11, 2001, the TSA required an

immediate evaluation and certification of the 452 airports in the United States. In five months, working with more than 2,300 people from multiple companies and communities, BearingPoint was able to develop an Overall Strategy and Program Management program for the TSA.

Certification of Independence and No Financial Interest

Each firm within the BearingPoint Team has submitted a Certification of Independence and No Financial Interest pursuant to paragraph 191 of Improving Public Safety Communications in the 800 MHz Band Report and Order.¹ Upon review of these disclosures and after additional discussions with Team representatives, the TASC has not discovered any area of concern relating to the independence or financial interests of the firms that make up the Team. The TASC believes the Team can serve as an independent Transition Administrator based on the disclosures provided by BearingPoint, Squire-Sanders-Dempsey LLP, and Baseline Technologies, respectively.

Selection of the BearingPoint Team

The TASC conducted an in-depth review of the twelve SOIs it received from interested parties and conducted face-to-face meetings with several of the interested parties. Based upon this analysis, the TASC members recommend unanimously the BearingPoint Team to serve as the FCC's Transition Administrator. The TASC determined that overall, the BearingPoint Team possessed the strongest skills among those responding and evidenced a demonstrated capability to successfully fulfill the responsibilities of the Transition Administrator. Furthermore, the TASC believes that the BearingPoint Team will be independent, impartial and will remain free of any potential conflict with regard to this undertaking.

¹ Certification of Independence and No Financial Interest submissions included in Appendix A